IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7964 of 1989

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

S S NANDRA

Versus

DIRECTOR GENERAL OF POLICE

Appearance:

MR YN OZA for Petitioner

MR SP HASURKAR for Respondent No. 1

NOTICE SERVED for Respondent No. 3, 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision:31/03/2000

ORAL JUDGEMENT

1. By this petition under Article 226, the petitioner is aggrieved by the action of the respondents

in cancelling order of his promotion (Annexure-B) dated 20-10-1982 to the post of Police Inspector. He was granted deemed date of promotion on the basis of next below rule from 12-4-1977 when employee next junior to him was promoted. The petitioner at the time of filing this petition did not possess the impugned order of cancellation of his promotion w.e.f. 12-4-1977 but he came to know about the same from the impugned communication dated 17-5-1983 (Annexure-A) .

The relevant facts with regard to the services of the petitioner are as under:

While he was working on the post of Sub Inspector his case for promotion to the post of Inspector was considered by the Selection Committee in the year 1976 and he was included in the select list, but he could not be promoted as he was facing departmental inquiry. He was cleared of the departmental inquiry in which he was exonerated in year 1980. Since there was no procedure of maintaining a 'Sealed Cover' for employees considered for promotion during pendency of an inquiry. After he was cleared of the departmental inquiry he was given the order of promotion on 20-10-1982. His deemed date for promotion was mentioned as 12-4-1977 on which date the employee immediately junior to him from the same select list, namely Shri N.K. Gaikwad, was promoted.

2. According to the petitioner, there was no justification for the respondents to issue a subsequent order dated 22-4-1983 (referred in the impugned communication in Annexure-A) whereby his earlier order of deemed promotion w.e.f. 12-4-1977 was cancelled and he was given prospective promotion from 10-5-1983.

3. On behalf of the respondents an affidavit in reply has been filed. To justify the order of cancellation of retrospective promotion granted to the petitioner, it has been stated that, during pendency of the departmental inquiry the Selection Committee again reviewed the case of the petitioner on 31-12-1979 and removed his name from the select list. This decision was taken after perusal of the confidential reports of the petitioner for the period of 1977. The criteria for promotion being proved merit and efficiency, petitioner's name was deleted from the select list. It is further submitted that, in passing the order of retrospective promotion (Annexure-B) the respondents lost sight of the fact that the petitioner's case was reconsidered by the Selection Committee in 1979 and he was found unfit. The stand therefore taken on behalf of the respondents is

that, as the petitioner was again considered by the Selection Committee in 1979 and he was not found fit on the criteria fixed, the earlier order of granting him promotion from deemed date was found to be erroneous and the same was cancelled.

4. Learned counsel Mr. Yatin Oza appearing for the petitioner contends that, once the petitioner was considered for promotion in the year 1976 and was included in the select list, but was not promoted awaiting conclusion of the departmental inquiry, there was no justification to review his case by the Selection Committee on 31-12-1979. As has been mentioned above the petitioner was exonerated of departmental inquiry in the year 1980. After exoneration from the departmental inquiry, as the petitioner's name was already in the select list of the year 1976, the same should have been given effect to.

5. After hearing learned counsel for the parties, this Court finds merit in the submissions made on behalf of the petitioner. The petitioner was considered and kept in the select list by the Selection Committee in the proceedings in year 1976, but he was not promoted because there was a departmental inquiry pending against him. There was no procedure of maintaining 'Sealed Cover'. But his case for promotion was liable to be considered only after the departmental inquiry was over. The respondents have not shown any justification as to why his case was reviewed by the Selection Committee on 31-12-1979, when at that time departmental inquiry or inquiries as said by the respondents were pending against him. It is clear from the reply on affidavit filed by the respondents that, the petitioner's case was prejudiced when he was reconsidered by the Selection Committee in its proceedings of 31-12-1979 on the laid down criteria of 'proved merit and efficiency' . His name was deleted from the select list at the time when he was facing departmental inquiry. The procedure adopted by the Selection Committee was not at all warranted by any laid down procedure or on legal principles. Once the petitioner's name was included in the select list of 1976 and he was denied promotion as he was facing departmental inquiry, soon after conclusion of the inquiry his case was liable to be considered for promotion as in the year 1976 when he was last considered along with his batchmates. This Court finds no justification for the Selection Committee to have reconsidered his case in its proceedings on 31-12-1979, when by that time the departmental inquiry was not concluded against him.

6. For the aforesaid reasons the petition deserves to be allowed. The Petition succeeds and is allowed. The impugned communication at Annexure-A dated 17-5-1983 resulting in cancellation of his order of promotion dated 20-12-1982 (Annexure-B) is hereby quashed. As a result the order dated 20-12-1982 (Annexure-B) granting promotion to the petitioner with deemed promotion from 12-4-1977 is restored.

7. On restoration of his order of promotion dated 20-12-1982 he shall be granted all consequential promotional and monetary benefits due if any. Since long period has elapsed after filing of this petition, the necessary consequential order be passed within a reasonable period of three months from the date of communication of this order. Rule made absolute. No costs.

Dt: 31-3-2000

(D.M. Dharmadhikari, C. J.)

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